

REMARKS

Claims 1, 3-6, 11, 13, 14 and 16-23 are pending in the application. Claims 1, 3, 6, 11 and 13 have been amended, claims 2, 7-10, 12 and 15 have been canceled, and claims 16-23 are newly added. Reconsideration of the rejection and allowance of the pending application in view of the following remarks are respectfully requested.

As an initial matter, Applicant wishes to thank the Examiner for indicating that claims 3, 5, 6 and 13 include allowable subject matter.

Applicant also thanks the Examiner for acknowledging Applicant's claim for foreign priority and receipt of all of the certified copies of the priority documents, and for considering all of the documents cited in the Information Disclosure Statement filed on February 4, 2004.

Applicant also notes that the Examiner has not yet indicated whether the drawings filed on November 4, 2003 are acceptable. Applicant respectfully requests that the Examiner confirm the acceptability of the drawings in the next Office communication.

In the Office Action, the Examiner objected to the title, asserting that it is not descriptive. Applicant has amended the title to "Confocal Probe Having Scanning Mirrors Mounted to a Transparent Substrate in an Optical Path of the Probe". Applicant respectfully submits that the amended title is descriptive, and thus respectfully requests the Examiner to withdraw the objection.

The Examiner also objected to paragraph [0106] of the specification, asserting that it should be located immediately following the title. Applicant has amended the specification to move the subject matter of paragraph [0106] to follow the title of the

specification, and thus, respectfully requests the Examiner to withdraw the objection.

In the Office Action, the Examiner rejected claims 1, 2, 4, 11, 12 and 14 under 35 U.S.C. § 102(b) as being anticipated by Hoeg et al. (U.S. Patent No. 6,371,909).

Applicant respectfully traverses the rejection for at least the following reasons.

In the specification of the present application, Applicant discloses an embodiment of a scanning type confocal probe which includes at least one scanning mirror. The scanning mirror includes a first rotating scanning mirror and a second rotating scanning mirror.

Hoeg is directed towards a system 10 for endoscopic viewing which includes an endoscope 12 having a distal end portion 26. See Figures 1 and 3; col. 3, lines 32-39 and 59-63. Hoeg discloses, at col. 4, lines 1-4 and Figure 3 that the distal end portion 26 includes an optical assembly 28 which includes a first reflector 30 and a second reflector 32. See Figure 3 and col. 4, lines 1-4. Hoeg discloses that the second reflector 32 is rotatably mounted in the endoscope 12; however, Hoeg discloses that the first reflector 30 is rigidly secured to the interior of the endoscope 12. See col. 4, lines 32-37.

Since Hoeg's first reflector 30 does not rotate, Applicant respectfully submits that Hoeg does not disclose or suggest a scanning type confocal probe which includes first and second rotating scanning mirrors, as recited in Applicant's independent claims 1 and 11.

For at least these reasons, Applicant respectfully submits that Hoeg does not anticipate the confocal probe of independent claims 1 and 11, and respectfully requests the Examiner to withdraw the 35 U.S.C. § 102(b) rejections and allow claims 1 and 11.

Claims 2 and 12 have been cancelled, as their subject matter have been incorporated into independent claims 1 and 11, respectively.

Dependent claims 4 and 14 are respectfully submitted to be in condition for allowance for at least the reasons set forth above with respect to independent claims 1 and 11.

In the Office Action, the Examiner objected to claims 3, 5, 6 and 13 as being dependent upon a rejected base claim, but indicated that they would be allowable if rewritten in independent form including all of the features of the base claim and any intervening claims.

Applicant has amended claims 3 and 13 to place them in independent form. For at least this reason, Applicant respectfully submits that claims 3 and 13 are allowable, and respectfully requests the Examiner to withdraw the objection to these claims.

Applicant respectfully submits that dependent claims 5 and 6 are in condition for allowance at least in view of their dependency on independent claim 1, and respectfully requests the Examiner to withdraw the objection to these claims.

Applicant has canceled claims 7-10 and 15, which the Examiner has withdrawn from consideration, in order to advance the prosecution of the application. However, Applicant expressly reserves the right to include these claims in a divisional application.

Applicant has added new dependent claims 16-23. Applicant respectfully submits that claims 16-23 are in condition for allowance at least in view of their dependency of independent claims 3, 11 and 13.

Based on the above, it is respectfully submitted that this application is now in condition for allowance, and a Notice of Allowance is respectfully requested.

SUMMARY AND CONCLUSION


Entry and consideration of the present amendment, reconsideration of the outstanding Office Action, and allowance of the present application and all of the claims therein are respectfully requested and now believed to be appropriate. Applicant has made a sincere effort to place the present invention in condition for allowance and believes that he has now done so.

Any amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Should an extension of time be necessary to maintain the pendency of this application, including any extensions of time required to place the application in condition for allowance by an Examiner's Amendment, the Commissioner is hereby authorized to charge any additional fee to Deposit Account No. 19-0089.

Should the Examiner have any questions or comments regarding this response, or the present application, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
Rogerio Jun MIZUNO



Bruce H. Bernstein
Reg. No. 29,027

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GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191

Steven Wegman
Reg. No. 31,438